

CONTRACT
Between City of Seattle and _____
For
Port Security Video Surveillance System

Note: This contract indicates terms and conditions required by The City. All submitting companies agree to the terms and conditions of this contract. Vendors may submit requests for exceptions at the time of proposal submittal; and the City may consider such requests but is not obligated to accept such requests. The City may also make changes to best reflect the project and interests of the City prior to submittal of the final Contract for signature.

This Contract is made and entered into by and between City of Seattle ("City"), a Washington municipal corporation; and _____ (Address: --), a corporation of the State of _____, and authorized to do business in the State of Washington.

Vendor Business:
Name of Representative:
Vendor Address:
Vendor Phone:
Vendor e-mail:

WHEREAS, the purpose of this contract is to procure a fully functional Port Security Video Surveillance System;

WHEREAS, Vendor was selected as a result of a Request for Proposal process initiated February ____ 2012 as required by Seattle Municipal Code since costs are anticipated to exceed \$44,000 in value;

WHEREAS, the City of Seattle acting through the Seattle Police Department was awarded grant for this Project by the FY-2008 Port Security Grant for Sector Puget Sound Sector (FEMA);

WHEREAS, the funds for this purpose have been authorized by Ordinance _____;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the Statement of Work contained herein, as attached and made a part hereof, the City and Vendor mutually agree as follows:

1. Term of Contract

This contract shall extend throughout the development, installation, testing and delivery, until City has completed acceptance in accordance with the Statement of Work. Continuous one-year extensions shall continue thereafter for licensing, maintenance and support. Such extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew. The Vendor may provide also provide a notice to not extend, but must provide such notice at least 45 days prior to the otherwise automatic renewal date.

2. Survivorship

All purchase transactions and deliverables executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extensions thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Vendor, Warranties, Publicity, Section Headings, Incorporated Documents and Order of Precedence, Publicity, Review of Vendor Records, Patent and Copyright Indemnification, Disputes and Limitations of Liability, shall survive the termination of this Contract.

3. Statement of Work

Vendor shall provide the products, services and tasks as described in the Contract attachments. The Statement of Work may also be termed "work" herein.

4. Expansion Clause

The City cannot unilaterally change the quantities on the purchase order. This contract may be expanded as mutually agreed, if such expansion is approved by the City Buyer. Expansions must be issued in writing from the City Buyer in a formal notice. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or Contractors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition; and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer. Note that certain changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by the City Purchasing Buyer in writing to the Contractor.

5. Work Order Process

The Vendor shall furnish all systems pursuant to work orders issued under this Contract. Each work order shall be subject to all of the terms and conditions of this Contract, and incorporated into this Contract by this reference. The Vendor shall furnish all the goods and services ("deliverables") specified in the Work Order in an aggregate, single, complete transaction and not as separate items. For each work order under this Contract, Vendor shall commence work upon issuance of a notice to proceed by the City. Work orders under this Contract may be generated by the City under the following conditions:

- (1) The Work Order is within the scope of the original solicitation and contract or is within the allowed conditions for expansions under Section 4 (Expansion Clause) above;
- (2) A post-warranty annual maintenance agreement is accepted by the City;
- (3) The City issues a request to upgrade equipment, software, or to change quantities of any deliverable;

- (4) The City orders additional custom features or interfaces for the Systems prior to or after the acceptance period.

For any subsequent work order(s) requested by either party, the Vendor shall submit a detailed proposal for the change. The Vendor shall analyze, record, estimate and submit to the City, for its approval, the proposed scope for the changed or new work, a work schedule, and a rate or price adjustment for completion of the work to be changed or added. Once this proposal is received and approved by the City, a new work order will be issued for the changed or additional work. Upon the City's written approval and notice to proceed, the Vendor shall implement the change or additional work and invoice for the changed or additional work consistent with the City's approval notice and the terms and conditions of this Contract.

The City may, at its option, add, delete or modify any part of any work order by giving Vendor notice of such change within the time period specified in the applicable work order. Within seven (7) days after the date of such notice, the Vendor shall deliver to the City an amended work order reflecting the change in description, schedule and/or dollar amount due using the unit prices as proposed for the specific work order in Vendor's Proposal.

The Vendor shall not proceed unless authorized by a mutually agreed upon amendment. Such extra work shall be in compliance with Section 4 (Expansion Clause) and shall be authorized in writing only by the City Purchasing Buyer, Department of Finance and Administration. Any costs incurred due to the performance of extra work will not be reimbursed until or unless an amendment is agreed upon.

The City does not guarantee utilization of goods and services provided for in this Contract for which the City has not issued a work order(s). The City may itself provide these goods or services or may award contracts to other Vendors for similar goods and services. In such instances, the Vendor shall not be responsible for the operation, performance or maintenance for equipment so obtained.

6. Documentation

Unless specified otherwise in Contract attachments, Vendor will provide two (2) complete sets of documentation for each Software/Hardware order or System delivered, including technical and maintenance information, and, where applicable, installation information. Vendor shall also provide two (2) complete sets of documentation for each updated version of Software that Vendor provides. Vendor shall provide the documentation on or before the date Vendor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Software documentation shall be comprehensive, well structured, and indexed for each reference. If Vendor maintains its technical, maintenance and installation documentation on a web site, Vendor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information.

The City reserves the right to withhold payment for a deliverable, modification or enhancement until it receives all documentation associated with the same.

7. Invoicing and Payment Procedures

Vendor shall only invoice upon the City's approval of the deliverable and in a manner

consistent with the payment schedule attached, if any. Once the City has received and approved the invoice, the City will provide payment within thirty (30) days. The aggregate amount represents the full and final amount to be paid by the City.

Payment will be made within 30 days of acceptance of the deliverable by the City's Project Manager and receipt of a correct invoice. If applicable, the invoice should itemize the number of billable hours or days worked and the deliverables performed for the period covered by the invoice. Additional payment terms or invoice instructions may be mutually agreed upon by the City and the Vendor.

The Vendor shall include the Agreement number on invoices and submit them to:

Seattle Police Department
Accounts Payable
PO Box 34986
Seattle, WA 98124-4986

The City shall not be obligated to pay any other compensation, fees, charges, travel and living reimbursements, prices or costs, nor shall Vendor charge any additional compensation for completing the work order of the Statement of Work. All costs invoiced to the City, shall be associated with an active and open work order.

Payment does not constitute whole or partial acceptance; City acceptance of the System shall only occur by formal written notice to that effect.

7.1. Advance Payment Prohibited

The City does not accept requests for early payment, down payment or advance partial payment, unless the Bid or Proposal Submittal specifically allows such pre-payment proposals or alternates within the bid process. Maintenance subscriptions may be paid up to one year in advance provided that should the City terminate early, the amount paid shall be reimbursed to the City on a prorated basis; all other expenses are payable net 30 days after receipt and acceptance of satisfactory compliance.

7.2. Disputed Work

Notwithstanding all above, if the City believes in good faith that some portion of Work has not been completed satisfactorily, the City may require Vendor to correct such work prior to The City payment. In such event, the City will provide to Vendor an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Vendor does not provide a sufficient remedy, The City may retain the amount equal to the cost to The City for otherwise correcting or remedying the work not properly completed.

8. Taxes, Fees and Licenses

8.1 Taxes

Where required by state statute, ordinance or regulation, Vendor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, The City agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Vendor shall be made for federal excise taxes and The City agrees to furnish Vendor with an exemption certificate where appropriate.

8.2 Fees and Licenses

Vendor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Vendor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Vendor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Vendor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

8.3 Calculation of Sales Tax

Vendor is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

9. Time is of the Essence

The City has an immediate need to implement the System and/or Software and equipment for the management and operation of the City. Therefore, time is of the essence in all matters relating to this Contract

10. License for Use

As part of the price of the System, the Vendor hereby grants to the City, and the City accepts from the Vendor, for so long as the City continues to use the System, a non-exclusive, fully paid, royalty free, perpetual license to unlimited use of the Software and related documentation for use on the System acquired by the City under this Contract.

11. Department of Homeland Security FEMA All contractors and any subcontracts paid with Department of Homeland Security FEMA funding shall adhere to the Department of Homeland Security FEMA Special Conditions set between the City of Seattle, as applicable, and the Special Conditions attached as Attachment #2 in RFP-DIT-2996.

12. Software Upgrades and Enhancements

Vendor shall:

- a. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- b. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to City; and
- c. Supply at no additional cost interface modules that are developed by Vendor for interfacing the Software to other Software products.

13. Warranties

12.1 Warranty of the System

Commencing on the date that the City issues its Final Acceptance Certificate, and extending for a period of three (3) years, Vendor warrants that the Software furnished

hereunder shall be free from programming errors and that the Software and hardware shall be free from defects in workmanship and materials and shall operate in conformity with the performance capabilities, Statement of Work, functions and other descriptions and standards applicable thereto and as set forth in this Contract including but not limited to the City's Request for Proposals; that the services shall be performed in a timely and professional manner by qualified professional personnel; and that the services, Software and Hardware shall conform to the standards generally observed in the industry for similar services, Software and hardware. If Vendor is not the original Software or hardware manufacturer, Vendor shall obtain in writing the manufacturer's consent to pass through all Software and hardware warranties for the City's benefit. During this warranty period, Vendor shall replace or repair any defect appearing in the Software or hardware, or deficiency in service provided at no additional cost to the City.

12.2 Warranty Against Planned Obsolescence

The Vendor warrants that the products proposed to and acquired by the City under this Contract are new and of current manufacture, and that it has no current plans for announcing a replacement line that would be marketed by Vendor as a replacement for any of the products provided to the City under this Contract and would result in reduced support for the product line within which the System furnished to the City is contained. The Vendor further warrants that, in the event that a major change in hardware, software, or operating system occurs that radically alters the design architecture of the System and makes the current design architecture obsolete within three (3) years after full execution of this Contract, and if the City continues its annual maintenance Contract with the Vendor, the Vendor shall provide the City with a replacement hardware, software, or operating system(s) that continues the full functionality of the systems, at no extra cost to the City.

12.3 No Surreptitious Code Warranty

The Vendor warrants to the City that no copy of the licensed Software provided to the City contains or will contain any Self-help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the Software. The term "Self-help Code" does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any "virus," "Trojan horse," "worm" or other Software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data or to perform any other actions. The term Unauthorized Code does not include Self-help Code.

The Vendor shall defend City against any claim, and indemnify the City against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

12.4 Title Warranty and Warranty against Infringement

The Vendor warrants and represents that the hardware and Software provided under this Contract is the sole and exclusive property of the Vendor or that the Vendor is authorized to provide full use of the hardware and Software to the City as provided herein. The Vendor warrants that it has full power and authority to grant the rights granted by this Contract to the City without the consent of any other person or entity.

In the event of any claim by a third party against the City for software used in the United States asserting a patent, copyright, trade secret, or proprietary right violation involving the System acquired by the City hereunder or any portion thereof, Vendor shall defend, at its expense, and shall indemnify the City against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful; provided, however, that Vendor is notified by the City in writing within a reasonable time after the City first receives written notice of any such claim, action, or allegation of infringement. In the event a final injunction or order is obtained against the City's full use of either the System or any portion thereof as a result of any such claim, suit or proceeding, and if no further appeal of such ruling is practicable, the Vendor shall, as mutually agreed upon and at the Vendor's expense:

- a. procure for the City the right to continue full use of the System; or
- b. replace or modify the same so that it becomes non-infringing (which modification or replacement shall not affect the obligation to ensure the System conforms with applicable Statement of Work); or
- c. if the product was purchased and the actions described in item (a) or (b) of Section 11.4, are not practicable, re-purchase the product from the City at a price mutually agreed upon, which shall relate to the value and utility of the product to the City; or
- d. if the System was leased, licensed, purchased or rented, and the actions described in item (a), (b), or (c) of Section 11.4, are not practicable, remove such System from the City's site(s) and pay the City promptly after notification for all direct and consequential damages suffered by the City as a result of the loss of the infringing product and any other continued utility of which to the City is adversely affected by the removal of the infringing product, and hold the City harmless from any further liability therefore under any applicable Order, Settlement, or other Contract.

In no event shall the City be liable to Vendor for any lease, rental, or maintenance payments after the date, if any, that the City is no longer legally permitted to use the System because of such actual or claimed infringement. In the event removal or replacement of the System is required pursuant to this paragraph, Vendor shall use reasonable care in the removal or modification thereof and shall, at its own expense, restore the City's premises as nearly to their condition immediately prior to the installation of the System as is reasonably possible.

No settlement that prevents the City from continuing to use the Software, other products or Software documentation as provided in this Contract shall be made without the City's prior written consent. In all events, the City shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Contract.

12.5 No Liens

The Vendor warrants that the Software and Equipment is the sole and exclusive property of the Vendor and that the Vendor is authorized to provide full use of the Software to the City as provided herein and that such Software is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this Contract and that the City is entitled to and shall be able to enjoy quiet possession and use of the Software and Equipment without interruption by Vendor or any other person making a claim under or through the Vendor or by right of paramount title.

12.6 Maintenance Services Warranty

The Vendor warrants that, in performing the services under the Maintenance Agreement appended as Appendix [], a future Appendix. The Vendor shall strictly comply with the descriptions and representations as to the services, including performance capabilities, accuracy, completeness, characteristics, Statement of Work, configurations, standards, function and requirements, which appear in this Contract and in the Vendor's response to the City's Request for Proposal. Its products shall be uniform in appearance and clean and presentable in accordance with generally applicable standards in the industry. Errors or omissions committed by the Vendor in the course of providing Services shall be remedied by the Vendor at its own expense.

12.7 Equipment Warranty

The Vendor warrants and represents that the Equipment provided to meet the requirements of the Statement of Work shall be free from all defects, shall be in good operating order, and shall operate in conformity with the descriptions and standards as set forth in the Vendor's Proposal and the City's RFP for a period of three (3) years from and after the Acceptance Date. During the warranty period, Vendor shall promptly, without additional charge, repair or replace the equipment or any part thereof that fails to function according the Vendor's Statement of Work or the Statement of Work of the manufacturer thereof.

12.8 Merchantability and Fitness Warranty

Vendor represents and warrants that the Software, other products and Software Documentation will be merchantable and will be fit for the particular purposes established in the City's RFP and the Vendor's response to the City's RFP.

12.9 Warrant of Compliance with Applicable Law

The Vendor warrants that the System, and the manufacture and production thereof, are in compliance with any and all applicable laws, rules, and regulations.

12.10 Date Warranty

The Vendor warrants that all Software provided under this contract: (a) does not have a life expectancy limited by date or time format; (b) will correctly record, store, process, present calendar dates; (c) will lose no functionality, data integrity, or performance with respect to any date; and (d) will be interoperable with other software used by City that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by City and remains unresolved after three calendar days, at City's discretion, the Vendor shall send, at Vendor's sole expense, at least one qualified and knowledgeable representative to City's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on City's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these

representations and warranties, Vendor shall indemnify and hold harmless the City from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said Breach.

12.11 Physical Media Warranty

Vendor warrants to City that each licensed copy of Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty."). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar day after the date of Acceptance of the Software copy by the City. Vendor shall replace, at Vendor's expense, including shipping and handling costs, any Software copy provided by Vendor that does not comply with this Warranty.

12.12 Survival of Warranties and Representations

The representations and warranties of the Vendor made pursuant to this Contract shall survive the delivery of the System, the payment of the purchase price, and the expiration or earlier termination of this Contract.

12. Reauthorization Code

Vendor's Software shall not require a reauthorization code in order for the Software supplied through this Contract to remain functional upon City's movement of the Software to another computer system.

14. Escrowing of Source Language of Licensed Software

1.1. Source Code Escrow Package Definition

The term "Source Code Escrow Package" shall mean:

- a. A complete copy in machine-readable form of the source code and executable code of the licensed Software;
- b. A complete copy of any existing design documentation and user documentation and/or
- c. Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

13.2 Delivery of Source Code Into Escrow

Vendor shall deliver a Source Code Escrow Package to Escrow Agent, provided that Vendor, City and Escrow Agent shall first enter into a supplementary escrow agreement as attached. Vendor and City shall use best efforts to enter into such an Escrow Agreement as soon as possible after the Effective Date of this Contract, but not later than 30 days after the Effective Date of this Contract.

13.3 Delivery of New Source Code into Escrow

If during the term of this Contract, term of license, or term of maintenance and support, Vendor provides City with a maintenance release or upgrade version of the licensed Software, Vendor shall within then (10) Business Days deposit with Escrow Agent a Source Code Escrow Package for the maintenance release or upgrade version and give city notice of such delivery.

13.4 Verification of Source Code Escrow Package

At its option and expense, City may request that the completeness and accuracy of any Source Code Escrow Package be verified.

- a. Such verification may be requested once per Source Code Escrow Package.
- b. Such verification will be conducted by Escrow Agent, or upon at least ten (10) Business Days' prior notice to the Vendor, by another party ("verifier") acceptable to Vendor, after full disclosure to Vendor of information reasonably requested by Vendor about Verifier.
- c. Prior to conducting the verification, Verifier shall first execute a confidentiality agreement prepared by Vendor that precludes Verifier from disclosing any information to City about the Source Code Escrow Package other than whether the Source Code Escrow Package was found to be complete and accurate.
- d. Unless otherwise agreed at the time y Vendor and City, verification will be performed on-site at Vendor's premises, utilizing Vendor's equipment and software, at a time reasonably acceptable to Vendor. Vendor shall make technical and support personnel available as reasonably necessary for the verification. At its discretion, Vendor may designate a representative to accompany the Source Code Escrow Package at all times, and to be present at the verification. Verifier will be City's sole representative at the verification.
- e. Verifier is solely responsible for the completeness and accuracy of the verification. Neither the Escrow Agent, if different from the Verifier, nor Vendor shall have any responsibility or liability to City for any incompleteness or inaccuracy of any verification.

13.5 Escrow Fees

All fees and expenses charged by Escrow Agent will be borne by Vendor.

13.6 Release Events for Source Code Escrow Packages

The Source Code Escrow Package may be released from escrow to City, temporarily or permanently, solely upon the occurrence of one or more of the following "Escrow Release Events:"

- a. Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for business or assets, or becomes subject to any proceeding under any bankruptcy or solvency law, whether domestic or foreign;
- b. Vendor has wound up or liquidated its business voluntarily or otherwise and City has compelling reasons to believe that such events will cause Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or
- c. Vendor has wound up or liquidated its business voluntarily or otherwise and City has compelling reasons to believe that such events will cause Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or
- d. Vendor has voluntarily or otherwise discontinued support of the Software or fails to support the Software in accordance with its warranties and maintenance obligations.

13.7 Release Event Procedures

If the City desires to obtain the Source Code Escrow Package from Escrow Agent:

- a. The City shall comply with the procedures set forth in the Escrow Agreement to document the occurrence of the Release Event;
- b. The City shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with the Contract section titled Vendor's Proprietary Information;

- c. If release is temporary, City shall promptly return all released materials to Vendor when the circumstances leading to the release are no longer in effect; and
- d. City shall promptly, fully, and completely respond to any and all requests for information from Vendor concerning City's use or contemplated use of the Source Code Escrow Package.

14 Title to Equipment

Upon successful completion of Acceptance Testing and receipt of City's letter of Acceptance (or upon delivery, if there is no Acceptance Testing), Vendor shall convey to City good title to the Equipment free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Equipment shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Equipment. If City subsequently transfers title to the Equipment to another entity, City shall have the right to transfer the license to use the internal code with the transfer of Equipment title. A subsequent transfer of this software license shall be at no additional cost or charge to either City or City's transfer.

15 Ownership of Deliverables

Except for the licensed System Software and its related documentation, all data and work products produced under this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. 101 et seq, and shall be owned by the City.

16 Risk of Loss, Freight, Overages or Underages

Regardless of FOB point, Vendor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Vendor from any obligations under. Prices include freight prepaid and allowed. Vendor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall match the Work Order; any unauthorized advance or excess shipment is returnable at Vendor's expense.

17 Protection of Persons and Property

18.1 Person

The Vendor and the City shall each take reasonable precautions for the safety of employees of the other, and shall each comply with all applicable provisions of federal, state, and local laws, codes and regulations to prevent or avoid any accident or injury to a person on, about or adjacent to any premises where work under this Contract is being performed.

18.2 Property

The Vendor shall take reasonable steps to protect the City's property from injury or loss arising in connection with the Vendor's performance or failure of performance under this Contract.

18.3 No Smoking

The Vendor shall not allow any employee of the Vendor or any sub or agent thereof to smoke inside any City facility.

18.4 OSHA/WISHA

The Vendor certifies that products are designed and manufactured to meet the current federal and state safety and health regulations, including Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health act of 1973 (WISHA). Vendor shall indemnify, defend, and hold the City harmless from all damages assessed against the City as a result of the failure of the products furnished under this Contract to so comply.

18.5 Workers Right to Know

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

19 Contract Notices, Deliverable Materials and Invoices Delivery

Official Contract notices shall be delivered to the following addresses (or such other address (es) as either party may designate in writing):

If delivered by the U.S. Postal Service, it must be addressed to:

Laura Kim, Senior Buyer
City of Seattle Purchasing and Contracting Services
PO Box 94687
Seattle, WA 98124-4687

If delivered by any other company, it must be addressed to:

Laura Kim, Senior Buyer
City of Seattle Purchasing and Contracting Services
Seattle Municipal Tower
700 5th Ave., #4112
Seattle, WA 98104-5042

Phone: 206-684-0445
E-Mail: laura.kim@seattle.gov

Project work and communications shall be delivered to the City Project Manager:

City of Seattle
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986
Attention: TBD

20. Representations

Vendor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

21. Inspection

Work shall be subject, at all times, to inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Vendor of responsibility for performance of the Work in accordance with this Contract, notwithstanding the City's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Vendor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

22. Women and Minority Subcontracting, Non-Discrimination

- **Employment Actions:** Vendor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Vendor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.
- In accordance with Seattle Municipal Code Chapter 20.42, Vendor shall actively solicit the employment and subcontracting of women and minority group members when there are commercially useful purposes for fulfilling the scope of work.
- In the event Subcontracting is considered appropriate and feasible to contract performance, the Vendor shall develop a Subcontracting Plan, which also may be referred to as an Inclusion Plan. The Subcontracting (Inclusion) Plan shall specify the Vendor's affirmative efforts and an agreement to the City for subcontracting to women and minority businesses, and/or diverse employment. The Subcontracting (Inclusion) Plan, as submitted and/or as agreed upon with the City thereafter, shall be incorporated as a material part of the Contract. In preparing the Subcontracting (Inclusion) Plan, Vendors shall actively solicit qualified, available and capable women and minority-owned businesses to perform the subcontracting work for the contract. The Vendor shall submit the Subcontracting (Inclusion) Plan to the City with the solicitation and/or prior to contract execution. At the request of the City, Vendor shall promptly furnish evidence of the Vendor's compliance with these requirements, which may include a list of all subcontractors and/or WMBE subcontractors, and may include a request for copies of the executed agreements between the Vendor and subcontractors, invoices and/or performance reports.
- If upon investigation, the Director of Finance and Administration finds probable cause to believe that the Vendor has failed to comply with the requirements of this Section, the Vendor shall be notified in writing. The Director of Finance and

Administration shall give Vendor an opportunity to be heard with ten calendar days' notice. If, after the Vendor's opportunity to be heard, the Director of Executive Administration still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Vendor, pending compliance by the Vendor with the requirements of this Section.

- Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Vendor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Vendor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

23. Assignment and Subcontracting

Neither part shall assign or subcontract any of its obligations under this Contract without mutual written consent, which shall not be granted or withheld without reasonable cause. Any subcontract made by the Vendor shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions. Vendor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions. Seattle's consent to any assignment or subcontract shall not release the Vendor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

24. Key Persons and Subcontractors

The Vendor shall not transfer, reassign or replace any individual or subcontractor that is determined to be essential or that has been agreed upon in the Vendor's Subcontracting (Inclusion) Plan, without express written consent of Seattle. If during the term of this Contract, any such individual leaves the Vendor's employment or any named subcontract is terminated for any reason, Vendor shall notify Seattle and seek approval for reassignment or replacement with an alternative individual or subcontractor. Upon Seattle's request, the Vendor shall present to Seattle, one or more subcontractors or individual(s) with greater or equal qualifications as a replacement. Continued achievement of the Subcontracting (Inclusion) Plan that was incorporated into this Contract by reference, if any, and the associated subcontract awards, aspirational goals and efforts, will be one of the considerations in approval of such changes. Seattle's approval or disapproval shall not be construed to release the Vendor from its obligations under this Contract.

25. Equal Benefits

- a. Compliance with SMC Ch. 20.45: The Vendor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Vendor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Vendor provides to its employees with spouses. At The City's request, the Vendor shall provide complete information and verification of the Vendor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)

- b. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which the City may:
- o Require the Vendor to pay actual damages for each day that the Vendor is in violation of SMC Ch. 20.45 during the term of the Contract; or
 - o Terminate the Contract; or
 - o Disqualify the Vendor from bidding on or being awarded a City contract for a period of up to five (5) years; or
 - o Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

26. General Legal Requirements

26.1 General Requirement

Vendor, at no expense to The City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Vendor shall specifically comply with the following requirements of this section.

26.2 Licenses and Similar Authorizations

Vendor, at no expense to The City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

27. Indemnification

Vendor shall defend, indemnify, and save City harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful, or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees or agents. Vendor's obligation to defend, indemnify, and save City harmless shall not be eliminated or reduced by any alleged concurrent City negligence.

28. Insurance

Unless specified otherwise, the following is in effect. Contractor shall maintain at its own expense at all times during the term of this Contract the following insurance with limits of liability consistent with those generally carried by similarly situated enterprise:

1. MINIMUM COVERAGES AND LIMITS OF LIABILITY. Vendor shall at all times during the term of this Agreement maintain continuously, at its own expense, minimum insurance coverages and limits of liability as specified below:
 - A. Commercial General Liability (CGL) insurance, including:
 - Premises/Operations
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual
 - Independent Contractors
 - Stop Gap/Employers Liability

with minimum limits of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except:
\$1,000,000 Personal/Advertising Injury
\$1,000,000 each accident/disease/employee Stop Gap/Employer's Liability

- B. Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of liability of \$1,000,000 CSL.
- C. Worker's Compensation for industrial injury to Vendor's employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
- 2. CITY AS ADDITIONAL INSURED. The City of Seattle shall be included as an additional insured under CGL and Automobile Liability insurance for primary and non-contributory limits of liability.
- 3. NO LIMITATION OF LIABILITY. The limits of liability specified herein in subparagraph 1.A. are minimum limits of liability only and shall not be deemed to limit the liability of Vendor or any Vendor insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of liability maintained by Vendor, whether such limits are primary, excess, contingent or otherwise.
- 4. MINIMUM SECURITY REQUIREMENT. All insurers must be rated A- VII or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.
- 5. SELF-INSURANCE. Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Vendor.
- 6. EVIDENCE OF COVERAGE. Prior to performance of any scope of work under paragraph 5. Vendor shall provide certification of insurance acceptable to the City evidencing the minimum coverages and limits of liability and other requirements specified herein. Such certification must include a copy of the policy provision documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis. Certification should be issued to The City of Seattle, Risk Management Division, Seattle, WA and shall be delivered in electronic form either as an email attachment to riskmanagement@seattle.gov or faxed to (206) 470-1270.

29. Review of Vendor Records

Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to protection and use of City's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation

related to this Contract shall be kept for six (6) years from the date of expiration or termination of this Contract whichever is later.

All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying or audit by personnel so authorized by the City's Contract Administration and/or the Office of the Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the City. During this Contract's term, Vendor shall provide access to these items at a mutually agreeable time and place. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.

It is agreed that books, records, documents and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from City's review unless the cost or any material issue under this Contract is calculated or derived from these factors.

30. Independent Contractor

The relationship of Vendor to The City by reason of this Contract shall be that of an independent Vendor. This Contract does not authorize Vendor to act as the agent or legal representative of the City for any purpose whatsoever. Vendor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of The City or to bind The City in any manner or thing whatsoever.

It is the intention and understanding of the Parties that Vendor shall be an independent Vendor and that the City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Vendor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Vendor shall not be deemed to convert this Contract to any employment contract. It is recognized that Vendor may or will be performing professional Work during the term for other parties and that The City is not the exclusive user of the Work that Vendor will provide.

31. No Conflict of Interest.

Vendor confirms that Vendor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Vendor selection, negotiation, drafting, signing, administration, or evaluating the Vendor's performance.

32. No Gifts or Gratuities.

Vendor shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official, that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Vendor. Promotional items worth less than \$25 may be distributed by the vendor to City employees if the Vendor uses the items as routine and standard promotions for business. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so

long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

33. Current and Former City Employees, Officers, and Volunteers.

Throughout the life of the contract, Vendor shall provide written notice to City Purchasing and the City Project Manager of any current or former City employees, officials or volunteers that are working or assisting on solicitation of City business or on completion of the awarded contract. The Vendor must be aware of the City Ethics Code, Seattle Municipal Code 4.16 and advise Vendor workers as applicable.

34. Contract Workers with 1,000 Hours

Throughout the life of the Contract, Vendor shall provide written notice to City Purchasing and the City Project Manager of any contract worker that shall perform more than 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those that the contract worker performs for the Contract, and any other hours that the worker performs for the City under any other contract. Such workers are subject to the requirements of the City Ethics Code, Seattle Municipal Code 4.16. The Vendor shall advise their Contract workers as applicable.

35.Errors & Omissions: Correction

Vendor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, Statement of Work, and other services furnished by or on the behalf of the Vendor under this Contract. The Vendor, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, Statement of Work, and/or other Vendor services immediately upon notification by The City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract and shall be in addition to all other obligations and liabilities of the Vendor.

36.Intellectual Property Rights

36.1 Patent

Vendor hereby assigns to The City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, Statement of Work, data, patent rights and findings developed in connection with the performance of Contract or any subcontract hereunder. Notwithstanding the above, the Vendor does not convey to The City, nor does The City obtain, any right to any document or material utilized by Vendor that was created or produced separate from this Contract or was preexisting material (not already owned by The City), provided that the Vendor has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Vendor grants The City an irrevocable, non-exclusive, fully-paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

36.2 Copyright

All materials and documents prepared by Vendor in connection with the Contract and Vendor shall retain the copyright (including the right of reuse) whether or not the Contract Statement of Work is completed. Vendor grants to The City a non-exclusive, irrevocable, unlimited, fully-paid, royalty-free license to use every document and all other materials prepared by the Vendor for The City under this Contract. If requested by The City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including

cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, The City in connection with the performance of the Work, shall be promptly delivered to The City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Vendor does not represent or warrant that such documents are suitable for reuse by The City, or others, on extensions of the project, or on any other project. Vendor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

37. Confidentiality

1. The Vendor understands that any records (including but not limited to bid or proposal submittals, the Agreement, and any other contract materials) it submits to the City, or that are used by the City even if the Vendor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Vendor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

2. If the City receives a public disclosure request made pursuant to RCW 42.56, the City will not assert an exemption from disclosure on behalf of the Vendor. For materials that the Vendor has properly marked, the City may notify the Vendor of the request and postpone disclosure for ten business days to allow the Vendor to file a lawsuit seeking an injunction preventing the release of documents pursuant to RCW 42.56.540. Any notification is provided as a courtesy and is not an obligation on behalf of the City. Unless the Vendor obtains and serves an injunction upon the City before the close of business on the tenth business day after the date of the notification, the City may release the documents. It is the Vendor's discretionary decision whether to file the lawsuit.

3. In order to request that material not be disclosed until receipt of notification of a public disclosure request, you must identify the specific materials and citations very clearly on the City Vendor Questionnaire that you believe are exempt from disclosure. The City will not withhold material for notification if the Vendor simply marked confidential on the document header, footer, stamped on all pages, or offered a generic statement that the entire document is protected. Only material specifically listed and properly cited on the Vendor Questionnaire will be temporarily withheld until the City provides notification of a public disclosure request.

4. If the Vendor does not obtain and serve an injunction upon the City within 10 business days of the date of the City's notification of the request, the Vendor is deemed to have authorized releasing the record.

5. If the Vendor does not submit a request within the Vendor Questionnaire, the Vendor is deemed to have authorized releasing any and all information submitted to the City.

6. Notwithstanding the above, the Vendor must not take any action that would affect (a) the City's ability to use goods and services provided under this Agreement or (b) the

Vendor's obligations under this Agreement.

7. The Vendor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

38. Publicity

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Vendor's product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific approval of the City's Project Manager or his/her designee.

39. Interlocal Agreement Act

RCW Chapter 39.34 allows cooperative purchasing between public agencies, non profits and other political subdivisions. Public agencies that file an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle may purchase from Contracts established by the City. The seller agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies that have such agreements with the City. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Vendor require additional pricing for such purchases, the Vendor is to name such additional pricing upon Offer to the City.

40. Key Persons

Vendor shall not transfer or reassign any individual designated in this Contract as essential to the Work, without the express written consent of the City, which consent shall not be unreasonably withheld. If during the Contract term, any such individual leaves the Vendor's employment, the Vendor shall present to the City one or more individual(s) with greater or equal qualifications as a replacement, subject to City approval, which shall not be unreasonably withheld. The City's approval or disapproval shall not be construed to release the Vendor from its obligations under this Contract.

41. Background Checks

The City may require background/criminal checks during the course of the contract for essential City purposes. The City does not intend to request background checks/verifications unless essential in the opinion of the City. The City may require any contract worker that has access to locations/systems/data to undergo a background/criminal check before that worker can have authorized access to those locations/systems/data.

42. Dispute Resolution

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Vendor's performance, if mutually agreed to be appropriate, through negotiations between the Vendor's Project Manager and the City's Project Manager, or if mutually agreed, referred to the City's named representative and the Vendor's senior executive(s). Either party may discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract for cause or convenience.

43. Termination

- a. For Cause: The City may terminate this Contract if the Vendor is in material breach of any of the terms of this Contract, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- b. For City's Convenience: The City may terminate this Contract at any time, without cause and for any reason including the City's convenience, upon written notice to the Vendor.
- c. Nonappropriation of Funds: The City may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.
- d. Acts of Insolvency: The City may terminate this Contract by written notice to Vendor if the Vendor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.
- e. Termination for Gratuities and/or Conflict of Interest: The City may terminate this Contract by written notice to the Vendor if The City finds that a conflict of interest exists in violation of the city Ethics Code, or that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Vendor or any agent therefore to any City official, officer or employee.
- f. Notice: The City is not required to provide advance notice of termination. Notwithstanding, the RFP Coordinator may issue a termination notice with an effective date later than the termination notice itself. In such case, the Vendor shall continue to provide products and services as required by the RFP Coordinator until the effective date provided in the termination notice.
- g. Actions Upon Termination: In the event of termination not the fault of the Vendor, the following shall apply:
 - 1. Vendor shall be paid for all products and services that have been ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted by the RFP Coordinator, together with any reimbursable expenses then due.
 - 2. For System development projects, Vendor shall be paid for progress performed that has been accepted by the City on or prior to the effective termination date, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract.
 - 3. The Vendor agrees that such payment shall fully and adequately compensate the Vendor and all subs for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract.
 - 4. Upon termination for any reason, the Vendor shall provide the City with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred.

5. In the event this Contract expires or is terminated for any reason, the City shall retain its rights in all Products, services and system progress that is in transit or delivered prior to the effective termination date.

44. Force Majeure– Suspension and Termination

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under Section 45 (Emergencies or Disasters), Section 45 below shall instead be in force.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

45. Major Emergencies or Disasters:

The City may undergo an emergency or disaster that may require the Vendor to either increase or decrease quantities from normal deliveries, or that may disrupt the Vendor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

- a. The City shall notify the Vendor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Vendor.
- b. Upon such notice by the City, the Vendor shall provide to the City goods and/or services in the quantities and schedule specified by the City, following the conditions named in this Section.
- c. The City of Seattle shall be the customer of first priority for the Vendor. The Vendor shall provide its best and priority efforts to provide the requested goods and/or services to the City of The City in as complete and timely manner as possible. Such efforts by the Vendor are not to be diminished as a result of Vendor providing service to other customers.
- d. If the Vendor is unable to respond in the time and/or quantities requested by the City, the Vendor shall make delivery as soon as practical. The Vendor shall immediately assist the City to the extent reasonable, to gain access to such goods and/or services. This may include:
 - o Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;

- o Offering the City substitutions provided the Vendor obtains prior approval from the City for such substitution.
- e. The Vendor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Vendor incurring unavoidable additional costs and causes the Vendor to increase prices in order to obtain a fair rate of return, the Vendor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

46. Debarment

In accordance with SMC Ch. 20.70, the Director of Finance and Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a sub on any Contract with the City for up to five years after determining that any of the following reasons exist:

- a. Vendor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- b. Vendor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- c. Vendor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- d. Vendor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- e. Vendor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- f. Vendor colluded with another Vendor to restrain competition.
- g. Vendor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- h. Vendor failed to cooperate in a City debarment investigation.
- i. Vendor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment following the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

47. Recycle Products Requirements

As required by Seattle Municipal Code 20.60, whenever practicable, Vendor shall use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City.

Vendors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Vendors are to use 100% post consumer

recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

48. Section Headings, Incorporated Documents and Order of Precedence

- a. The headings used herein are inserted for convenience only and do not define or limit the contents.
- b. No verbal agreement or conversation between any officer, agent, associate or employee of The City and any officer, agency, employee or associate of the Vendor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- c. The following documents are incorporated. Where there is conflict or gap between or among these documents, the controlling document will be resolved in the following order of precedence (first listed being the precedent):
 - i) Applicable federal, state and local statutes, laws and regulations;
 - ii) Sections of this Contract
 - iii) All Attachments to this Contract, including Pricing, Management, and Technical Specification Agreements
 - iv) Licensing and Maintenance Agreements
 - v) RFP issued by the City
 - vi) Vendor Proposal Response
 - vii) City Purchase Order documents issued, if any; and
 - viii) Vendor or manufacturer publications or written materials Vendor made available to City and used to effect the sale.

49. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof. No changes to provisions, price, quality, or Statement of Work of this Contract will be effective without the written consent of both parties.

50. Authority for Modifications and Amendments

The Parties hereto reserve the right to make amendments or modifications to this Contract by written agreement, signed by an authorized representative of each party. No modification, amendment, alteration, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by the City RFP Coordinator and Vendor Contracting Officer. Only the City RFP Coordinator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of the City.

51. Severability

If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

52. Miscellaneous Provisions

- a. **Binding Contract:** This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- b. **Applicable Law/Venue:** This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- c. **Remedies Cumulative:** Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- d. **Waiver:** No term or condition or breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither acceptance by The City of Vendor performance nor payment to Vendor for any portion of Work shall constitute a waiver by The City of the breach or default of any term or condition unless expressly agreed to by The City in writing.
- e. **Negotiated Contract:** The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- f. **Attorneys' Fees:** Subject to the indemnification provisions set forth in this Contract, if any action or suit is brought with respect to a matter or matters covered by this Contract, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees.
- g. **Authority:** Each party represents that it has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and shall be bound by it.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their authorized representatives affix their signatures below.

(Vendor)

City of Seattle

By _____
Signature Date

By _____
Signature Date

(Printed Name)

NANCY LOCKE, City Purchasing and
Contracting Services Director

Title